

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

CYNTHIA BARBOUR, in her capacity as )  
Trustee under the Admiration M Trust, )  
JULIA LUNN, individually, and in her )  
capacity as Trustee under the )  
Admiration M Trust, and ADAM )  
SPIEGEL, )

Plaintiffs, )

v. )

TD AMERITRADE, INC., STEVEN )  
KEARNS, and LAUREN SCOTT, )

Defendants. )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

1. On July 18, 2019, plaintiffs Cynthia Barbour and Julia Lunn commenced an action in the General Court of Justice, Superior Court Division, Guilford County, State of North Carolina, entitled *Cynthia Barbour, in her capacity as Trustee of the Admiration M Trust, Julia Lunn, individually, and in her capacity as Trustee of the Admiration M Trust, and Adam Spiegel v. TD Ameritrade, Inc., Steven Kearns, and Lauren Scott*, File No. 19 CVS 7140.

2. A copy of the complaint in that action is attached as Exhibit A.

3. The other filings of record in state court that have been provided to Ms. Scott and/or Dr. Kearns are attached hereto. Those filings are as

follows: (1) a motion for temporary restraining order; (2) a notice of hearing for said temporary restraining order; and (3) an Order of the Superior Court setting a hearing for Monday, July 29, 2019. Those documents are attached as Exhibits B, C, and D, respectively. These exhibits, as well as plaintiffs' complaint, have been redacted to comply with Rule 5.2 of the Federal Rules of Civil Procedure and/or N.C. Gen. Stat. § 132-1.10.

4. On July 24, 2019, Ms. Scott was formally served with a copy of a summons and complaint. Dr. Kearns has not yet been formally served with a summons and complaint. Both of these defendants join in and consent to the removal of this action to federal court.

5. Upon information and belief, defendant TD Ameritrade, Inc., has not yet been formally served with a copy of a summons and complaint. In any event, TD Ameritrade, Inc., is only a nominal defendant and is thus disregarded for purposes of removal and otherwise.

6. This Court has original federal jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. Proof of the amount of controversy is shown by the exhibits attached to plaintiffs' complaint as well as Exhibit E attached hereto, the account statement for the end of 2018 showing the amount in the investment

account placed at issue to be in excess of \$276,000. The amount in this account has remained well in excess of \$75,000 at all points since.

8. As stated in plaintiffs' complaint, plaintiff Cynthia Barbour is a citizen of the State of North Carolina, and plaintiff Julia Lunn is a citizen or subject of Switzerland. Meanwhile, defendant Scott Kearns is a citizen of California, defendant Lauren Scott is a citizen of New York, and defendant TD Ameritrade, Inc., is a corporation organized under the laws of the State of New York with its principal place of business located in Nebraska. Though the complaint contains the name of Adam Spiegel (an alleged resident of New York and beneficiary of the Admiration M Trust) in its caption, Mr. Spiegel has not in fact joined this suit; nor is he is a necessary or proper party to the case; and in no event should he have been listed as a *plaintiff* under N.C. R. Civ. P. 19(a). Instead, to the extent Mr. Spiegel can even be considered to have been joined at all, such joinder is fraudulent. Therefore, the parties are diverse under 28 U.S.C. § 1332(a), and this action may be removed to this Court by these defendants pursuant to 28 U.S.C. §§ 1441 and 1446.

9. Notice of this removal will be promptly served on the other parties and the Clerk of Superior Court in the General Court of Justice, Guilford County, State of North Carolina, a copy of which will be filed as a separate document and CM/ECF docket entry in compliance with this Court's rules.

WHEREFORE, the undersigned defendants hereby remove the action now pending against them in the General Court of Justice, Superior Court Division, Guilford County, State of North Carolina, to this Court.

Respectfully submitted, this the 25th day of July, 2019.

/s/B. Tyler Brooks

B. Tyler Brooks

N.C. Bar No. 37604

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*Counsel for Defendants*

*Steven Kearns and Lauren Scott*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically on July 25, 2019. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system. A copy will also be served by First Class U.S. mail upon the counsel and parties listed below at the addresses indicated.

/s/B. Tyler Brooks  
B. Tyler Brooks

### SERVED:

Scott K. Tippet, Esq.  
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*Counsel for Plaintiffs*  
*Cynthia Barbour and Julia Lunn*

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(and via email to [estates@tdameritrade.com](mailto:estates@tdameritrade.com))